

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN DOES A, B, C, D, E, F, G, H,
MARY DOE and MARY ROE, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

GRETCHEN WHITMER, Governor of the
State of Michigan, and COL. JOSEPH
GASPER, Director of the Michigan State
Police, in their official capacities,

Defendants.

No. 2:22-cv-10209

Hon. Mark A. Goldsmith
Mag. Curtis Ivy, Jr.

PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiffs submit this notice to bring to the Court's attention a recent decision of the United States Supreme Court, *Federal Bureau of Investigation v. Fikre*, No. 22-1178 (United States Supreme Court, March 19, 2024) (attached as Exhibit A).

Defendants here have argued that Plaintiffs' claim on behalf of people with non-sex offenses is moot because Defendants have temporarily removed some (but not all) members of the Non-Sex-Offense Subclass from the registry pending a decision of the Michigan Supreme Court in *People v. Lymon*, 993 N.W.2d 24 (Mich.

App. 2022). *See* Defs' Mot. for Summ. Judg., ECF No. 129, PageID.7149; Pls' Reply, ECF No. 131, PageID.7598. In *Fikre* the government similarly argued that the plaintiff's challenge to the government No Fly List was moot because the plaintiff had been removed from the list. The Supreme Court unanimously disagreed.

The Court explained that the government cannot moot a case through "the simple expedient of suspending its challenged conduct after it is sued." *Id.*, at p. 6. "In all cases, it is the defendant's burden to establish that it cannot reasonably be expected to resume its challenged conduct—whether the suit happens to be new or long lingering, and whether the challenged conduct might recur immediately or later as some more propitious moment." *Id.*, at p. 8. The government had failed to meet that "formidable standard" because, although it had removed Mr. Fikre from the No Fly List, it had failed to establish conclusively that Mr. Fikre would not end up back on that list in the future. *Id.*

Here too the government cannot meet the formidable standard required for mootness. Defendants have not met their burden of establishing that subset of Non-Sex-Offense Subclass members who were removed will not end up back on the registry in the future. To the contrary, the Michigan State Police is actively litigating in the Michigan Supreme Court to overturn the Court of Appeals' decision in *Lymon* and ensure that those removed are again put on the registry.

Respectfully submitted,

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LOCAL RULE CERTIFICATION

I, Dayja Tillman, certify that this document complies with Local Rule 5.1(a), including: double-spaced; at least one-inch margins on the top, sides, and bottom; consecutive page numbering; and type size of all text and footnotes that is no smaller than 10-1/2 characters per inch (for non-proportional fonts) or 14 point (for proportional fonts). I also certify that this document complies with the page limitations set under Local Rule 7.1(d)(3).

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